

March 1, 2005

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Washington, DC 20554

RE: Ex Parte Notice, WT 96-86 (ELECTRONIC FILING)

Dear Ms. Dortch:

Attached is an ex parte notice for an electronic message I sent yesterday to Mr. Michael Wilhelm, Chief of the Public Safety & Critical Infrastructure Division of the Wireless Telecommunications Bureau.

While I am not totally sure if filing this exparte notice is necessary, out of an overabundance of caution I have decided to file it.

If there are any questions, please do not hesitate to contact me. I can be reached at (434) 455-9465.

Sincerely,



Robert J. Speidel, Esq.
Manager, Government Affairs - Regulatory Policy

cc: Michael Wilhelm (electronic)
John Muleta, WTB (electronic)
Sheryl Wilkerson (electronic)
Sam Feder (electronic)
Paul Margie (electronic)
Barry Ohlson (electronic)
John Branscome (electronic)
Bryan Tramont (electronic)

-----Original Message-----

From: Speidel, Bob [mailto:speidelbo@tycoelectronics.com]

Sent: Monday, February 28, 2005 9:48 AM

To: Michael Wilhelm

Subject: Question/Observation

Hello Michael:

Have I missed something? I have been watching the Federal Register for the publication of the 4.9 MO&O (04-265) and the 96-86 5th MO&O/6th R&O/7th NPRM, and even though it now is almost 4 months since the 4.9 MO&O has been released, I have not seen anything. I am starting to get nervous that I have missed something. While it has only been two months since the release of the 96-86 5th MO&O/6th R&O/7th NPRM, I am secretly hoping the delay is the result of the Commission, on its' own motion, correcting the action taken in the MO&O portion of the order.

I understand the Commission's desire to delay the 2007 mandate, although I do not necessarily agree. In any case I think the Commission has established a very dangerous precedent when changing the 90.535(d)(1) dates from 12/31/2006 to 12/31/2014, based on the Petition filed in January of 2003. Up until now, the Commission has always required the Petitioner to demonstrate the Commission made an error in application of the information developed in the record used to support the decision or the Petitioner must proffer new evidence showing the decision is inappropriate, which such new evidence was unavailable to be provided to the Commission in a timely manner. Merely disagreeing with decisions made by the Commission in a Report and Order has never been a sufficient legal basis.

In the instant case, I do not believe the Petition met either requirement justifying the Commission's action in the 5th MO&O. I do, however, acknowledge the Commission noted in the 5th R&O when the 2007 date was established, it would delay the 2007 date, if the Commission was unsatisfied with the pace of 6.25 or equivalent equipment certification. Even though the Commission never delineated what was meant by unsatisfactory progress, I do believe the Commission could at the time of adopting the 5th MO&O, legally stayed the 2007 dates, thereby achieving the same result as has seemingly been accomplished by changing the rules in the 5th MO&O. More importantly, by staying the rules rather than changing the rules based upon a legally insufficient Petition, the Commission would have insulated itself from further Petitions for Reconsideration on the spectrum efficiency issue, and most importantly would not have run the risk of overriding a very important precedent for evaluation of Petitions for Reconsideration.

Well, enough of my rambling. Are there any problems, you know of concerning the publication of the 4.9 MO&O and the 96-86 5th MO&O/6th R&O/7th NPRM?

Best Regards,

Bob

(434) 455-9465